

Message Text

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PAGE 01 STATE 026018

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ORIGIN L-03

INFO OCT-01 AF-10 ARA-16 EUR-25 EA-11 NEA-11 ISO-00 JUSE-00

CIAE-00 DODE-00 PM-07 H-03 INR-10 NSAE-00 NSC-10

PA-04 RSC-01 PRS-01 SPC-03 SS-20 USIA-15 SAM-01 OMB-01

IO-14 EB-11 COME-00 CPR-02 COA-02 TRSE-00 SCA-01

SCS-03 /186 R

DRAFTED BY L/M/SCA:JABOYD:MA

APPROVED BY L/M/SCA:KEMALMBORG

JUSTICE:BRISTAU

EA/TB:VTOMSETH

ARA/BR:AWATSON

EUR/CE:WSWING

AF:RKSHERWOOD

EA/PRCM:RHOLMES

EUR/NE:CFLOYD

EA/PHL:RTWILLNER

ARA/MEX:APSHANKLE NEA/INS:RKING

EUR/WE:JHAWES EUR/WE:EJBEIGEL

EA/IMS:PGILL NEA/IRN:BGMORTON

EA/J:WPIEZ

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P 072240Z FEB 74

FM SECSTATE WASHDC

TO AMEMBASSY TOKYO PRIORITY

AMEMBASSY BANGKOK

AMEMBASSY BRASILIA

AMEMBASSY BONN

AMEMBASSY DAKAR

AMEMBASSY LAGOS

AMCONSUL HONG KONG

AMEMBASSY KUALA LUMPUR

AMEMBASSY MANILA

AMEMBASSY MEXICO

AMEMBASSY LONDON

UNCLASSIFIED

UNCLASSIFIED

PAGE 02 STATE 026018

AMEMBASSY NEW DELHI

AMEMBASSY PARIS
AMEMBASSY ROME
AMEMBASSY TEHRAN

UNCLAS STATE 026018

E.O. 11652, N/A

TAGS: PFOR

SUBJECT: PENDING SOVEREIGN IMMUNITY LEGISLATION

REF:

1. IN JANUARY 1973, THE DEPARTMENTS OF JUSTICE AND STATE SUBMITTED TO THE CONGRESS PROPOSED LEGISLATION SETTING FORTH THE EXTENT TO WHICH FOREIGN STATES ARE SUBJECT TO, AND IMMUNE FROM, SUIT IN U.S. COURTS (S. 566 AND H.R. 3493). DEPARTMENT REQUESTS MISSION TO APPROACH APPROPRIATE HOST GOVERNMENT LAWYER OR OTHER RELIABLE LOCAL LAWYER KNOWLEDGEABLE IN LOCAL LAW RELATING TO SOVEREIGN IMMUNITY AND ATTEMPT TO OBTAIN ANSWERS TO QUESTIONS LISTED BELOW. SUCH INFORMATION WILL ENABLE DEPARTMENT TO PROVIDE MORE INFORMED ANSWERS TO QUESTIONS RAISED BY CONGRESSIONAL COMMITTEES AND BY ORGANIZED BAR CONCERNING PROPOSED LEGISLATION. NO FUNDS ARE AUTHORIZED FOR LEGAL FEES FOR THIS PURPOSE.

2. A) DOES LAW OF HOST STATE PROVIDE JUDICIAL OR ADMINISTRATIVE REMEDIES AGAINST LOCAL GOVERNMENT IN TORT, CONTRACT, AND ADMIRALTY CLAIMS? (FOR EXAMPLE, COULD AN INDIVIDUAL (INCLUDING A PRIVATE COMPANY) SUE THE LOCAL GOVERNMENT IN ITS COURTS IF HE WERE NEGLIGENTLY INJURED BY A VEHICLE OPERATED BY THE HOST GOVERNMENT? COULD AN INDIVIDUAL SUE THE LOCAL GOVERNMENT FOR DAMAGES

ARISING OUT OF A BREACH OF CONTRACT BETWEEN SUCH INDIVIDUAL AND THE LOCAL GOVERNMENT? COULD AN INDIVIDUAL SUE THE LOCAL GOVERNMENT FOR DAMAGES ARISING OUT OF A COLLISION INVOLVING A VESSEL OWNED AND OPERATED BY THE LOCAL GOVERNMENT?)

UNCLASSIFIED

UNCLASSIFIED

PAGE 03 STATE 026018

B) ARE SUCH REMEDIES PROVIDED BY SPECIFIC STATUTES OR BY DECISIONS OF THE COURTS? IF POSSIBLE, CITE SPECIFIC STATUTE(S), DECREE(S) OR PERTINENT COURT DECISION(S).

C) COULD A U.S. CITIZEN (OR A U.S. COMPANY) OBTAIN THE SAME REDRESS AGAINST THE HOST GOVERNMENT? IS THERE A REQUIREMENT THAT A U.S. CITIZEN SHOW RECIPROCITY IN THE U.S. BEFORE BEING PERMITTED TO SUE? IF POSSIBLE,

CITE SPECIFIC STATUTE(S) OR DECREE(S).

3. A) WHAT IS THE LOCAL PRACTICE IN MAKING JUDICIAL REMEDIES AVAILABLE FOR TORT, CONTRACT, OR ADMIRALTY CLAIMS BROUGHT AGAINST A FOREIGN STATE BEFORE THE COURTS OF THE HOST COUNTRY? IS PRACTICE BASED ON STATUTE(S), DECREE(S), OR ON COURT DECISION(S)? IF POSSIBLE, CITE SPECIFIC REFERENCES.

B) ASSUMING THAT LOCAL PRACTICE PERMITS SUIT AGAINST A FOREIGN STATE, WHAT PROVISION IS MADE FOR SERVICE OF PROCESS AGAINST SUCH FOREIGN STATE? (FOR EXAMPLE, COULD SERVICE BE MADE ON THE EMBASSY OR ON A CONSULATE OF THE DEFENDANT GOVERNMENT (BY MAIL OR BY DIPLOMATIC NOTE), OR ON THE DEFENDANT GOVERNMENT IN ITS CAPITAL THROUGH THE EMBASSY OF THE STATE WHERE THE ACTION IS BROUGHT). ASSUMING SUCH PROVISIONS EXIST, ARE THEY BASED ON STATUTE(S), DECREE(S) OR COURT RULE(S)? IF POSSIBLE, CITE SPECIFIC PROVISIONS.

C) IS THERE ANY PROVISION IN THE LAWS OF THE HOST STATE REGARDING WHO IN THE HOST STATE SHOULD RECEIVE NOTICE OF A SUIT FILED AGAINST THE HOST STATE IN ANOTHER COUNTRY? (COMPARE: IN THE U.S., THE FEDERAL RULES OF CIVIL PROCEDURE PROVIDE THAT SERVICE OF PROCESS IN AN ACTION AGAINST THE U.S. IN AN AMERICAN COURT SHALL BE MADE ON THE ATTORNEY GENERAL. THERE IS NO SPECIFIC PROVISION AS TO WHO IN THE U.S. SHOULD BE SERVED IF AN ACTION IS BROUGHT AGAINST THE U.S. ABROAD.)

4. A) MAY THE LOCAL SUITOR ATTACH ASSETS OF THE FOREIGN STATE LOCATED IN THE FORUM STATE (SUCH AS A MERCHANT VESSEL OR A COMMERCIAL BANK ACCOUNT) TO ESTABLISH

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PAGE 04 STATE 026018

JURISDICTION IN THE LOCAL COURTS FOR PURPOSES OF ASSERTING

A CIVIL CLAIM AGAINST SUCH FOREIGN STATE?

B) WHAT ASSETS, IF ANY, ARE SUBJECT TO ARREST OR ATTACHMENT?

5. UNDER LAW OF HOST COUNTRY IS FORCIBLE EXECUTION OF A JUDGMENT PERMITTED AGAINST ASSETS OF A FOREIGN STATE? IF SO, UNDER WHAT CIRCUMSTANCES AND AGAINST WHAT TYPE OF ASSETS? IF POSSIBLE, CITE APPLICABLE STATUTE(S), DECREE(S) OR COURT DECISIONS. IS EXECUTION BASED ON MOTIONS OF RECIPROCITY?

6. DEPARTMENT IS FORWARDING UNDER SEPARATE AIRGRAM A

COPY OF THE BILL AND TESTIMONY OF THE ACTING LEGAL ADVISER BEFORE THE HOUSE JUDICIARY COMMITTEE FOR YOUR INFORMATION AND FOR CONSULTATION IN YOUR DISCRETION WITH INTERESTED HOST GOVERNMENT OFFICIALS OF THE HOST GOVERNMENT.

7. IF THIS EXERCISE PRODUCES PERTINENT INFORMATION, WE WILL PURSUE THIS INQUIRY THROUGH ALL DIPLOMATIC POSTS. POSTS SHOULD THEREFORE INCLUDE IN YOUR RESPONSE ANY COMMENTS ON THE QUESTIONS THEMSELVES OR ON THE DIFFICULTY OF PROVIDING ANSWERS WITHOUT COMMISSIONING LEGAL RESEARCH.

8. FOR BANGKOK, HONG KONG, KUALA LUMPUR AND MANILA: AS INDICATED IN STATE 21997, ASSISTANT LEGAL ADVISER LOUIS G. FIELDS AND ATTORNEY ADVISER JOHN A. BOYD HAVE ALREADY PLANNED TO TRAVEL TO EACH OF THE MENTIONED MISSIONS AS PART OF A SUBCOMMITTEE OF THE INTERAGENCY COMMITTEE ON FOREIGN TAX RELIEF. IF EMBASSY DEEMS APPROPRIATE, MR. BOYD WILL BE AVAILABLE FOR CONSULTATION CONCERNING THE QUESTIONS POSED AND WOULD BE PLEASED TO JOIN MISSION REPRESENTATIVE IN MEETING WITH HOST GOVERNMENT LAWYER OR OTHER LAWYER SELECTED BY MISSION TO OBTAIN ANSWERS TO THESE QUESTIONS.

9. FOR LONDON AND ROME: THE ITINERARY FOR MR. FIELDS
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PAGE 05 STATE 026018

AND MR. BOYD IS AS FOLLOWS:

ROME: ARRIVE 10 MARCH AT 1145 ABOARD AZ 713;
DEPART 13 MARCH AT 1315 ABOARD AZ 280; RESERVATIONS FOR
HOTEL FOR BOYD AND FIELDS HAVE BEEN REQUESTED.

LONDON: ARRIVE MARCH 13 AT 1430 ABOARD AZ 280;
DEPART MARCH 14 AT 1130 ABOARD PA 107; RESERVATIONS
CONFIRMED AT SHERATON HEATHROW.

10. FOR LONDON: INTERAGENCY TAX STUDY DOES NOT INCLUDE SURVEY IN LONDON AT THIS TIME. MR. BOYD WOULD BE WILLING TO REMAIN IN LONDON FOR DAY OF MARCH 14 FOR CONSULTATION IF EMBASSY DEEMS APPROPRIATE, AND THEN DEPART ON MARCH 15. COMPLETE ITINERARY FOUND IN STATE 21997 WHICH IS BEING FORWARDED TO LONDON. IF EMBASSY DESIRES MR. BOYD STOPOVER FOR CONSULTATIONS, SEND TELEGRAPHIC REQUEST TO AN ITINERARY STOP SHOWN IN STATE 21997.

11. FOR MANILA: IN VIEW OF RECENT DISCUSSIONS REGARDING SOVEREIGN IMMUNITY ISSUE WITH GOP, DEPARTMENT SUGGESTS EMBASSY CONSIDER WHETHER QUESTIONS CAN BE ANSWERED

INTERNALLY WITHOUT APPROACHING GOP. MR. BOYD WILL BE
IN MANILA AS STATED IN REFTEL TO DISCUSS SUBJECT WITH
EMBASSY OFFICERS OR OTHERS AS EMBASSY DEEMS APPROPRIATE.
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